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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

JUN 26 1998

Michael N. Milby
Clerk of Court

EDWARD ALCALA, et al.,

Plaintiffs,

vs.

ALEX PEREZ, in his official capacity as
Sheriff of Cameron County, Texas and
Cameron County, Texas,

Defendants.

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CIVIL ACTION NO. B-96-203

**RESPONSE TO DEFENDANTS'
MOTION TO COMPEL**

COME NOW EDWARD ALCALA, ET AL and make this their response to defendants' motion to compel and would show the Court as follows:

I.

The plaintiffs objected to the defendants' interrogatories in open court and the court indicated that if not resolved by the parties, the issue regarding certain questions in the interrogatories and the numbers of interrogatories to be answered would be taken up by the court at a later date.

There are more than two hundred fifty (250) named plaintiffs presently in the case. The defendants have been provided with individual calculations for each plaintiff to the lawsuit. The calculations are based on the category into which each plaintiff falls; for instance, all jailers worked the same number of hours, all patrol deputies worked the same number of hours, all investigators worked the same number of hours and all classification officers work the same number of hours. This applies for each category of employment throughout the sheriff's department. The only difference had to do with some lieutenants or supervisors working more hours than nonsupervisors and some detention officers were reserve deputies. These are easily identified and most of if not all worked the

same reserve hours each month.

The defendants want each and every plaintiff to individually answer interrogatories and then, negotiate with each and every plaintiff individually. The problem is that each and every plaintiff will provide the same answers to interrogatories as all others within the same category. It is a waste of time, over burdensome and unnecessary (it is also environmentally unsound) to answer each and every interrogatory. A few select persons from each category can answer for all others within the category. The individualized information has already been provided to the defendants by way of detailed calculations.

In regard to the defendants' motion to compel responses to the request for production, it should be noted that all documents relevant to the plaintiffs' employment with the county are in the hands of the defendants. The plaintiffs do not have their personnel records, their time records nor their pay records. What records that may exist are in the possession of the defendants.

As to the defendants preferred approach to determining individual claims, it should be noted that taking the stories as a whole and getting a general idea of the employment practices is a perfectly acceptable way to do a large overtime wage case. See Marshall v. R. & M. Erectors, 329 F. Supp. 771 (Dist. Ct. Del. 1977). In support of this respond, Plaintiffs attach the affidavit of Co-counsel James Herrmann as Exhibit "A", which explains the chronology of this issue as well as the lack of pragmatism in the Defendants approach.

WHEREFORE, Plaintiffs pray that the Court deny the Defendants' Motion to Compel.

Respectfully submitted,

BY: _____



GEORGE P. POWELL
State Bar No. 16196000
Fed. I.D. No. 3849
"Attorney In Charge"
HINOJOSA & POWELL, P.C.
612 Nolana, Ste. 410
McAllen, TX 78504
(956) 686-2413
Fax No. (956) 686-8462

JAMES A. HERRMANN
State Bar No. 09541500
Fed. I.D. No. 3824
1205 E. Tyler Avenue
P O Box 2541
Harlingen, TX 78551-2541
(956) 421-5776
Fax No. (956) 421-5779

JOE VALLE
State Bar No. 20435450
Fed. I.D. No. 11422
1120 E. 10th Street
Brownsville, Texas 78520
(956) 546-2829
Fax No. (956) 542-4084

PATRICIA A. HERNANDEZ
State Bar No. 00790874
Fed. I.D. No. 18085
VALDEZ & HERNANDEZ
3302 Boca Chica Blvd., Ste. 104
Brownsville, TX 78521
(956) 541-9001
Fax No. (956) 550-9553

CERTIFICATE OF SERVICE

I, GEORGE P. POWELL, do hereby certify that on this the 24th day of June, 1998,

I caused to be mailed a true and correct copy of Plaintiffs' Response to Motion to Compel
to defendants' attorney of record:

Mr. Richard O. Burst
Legal Division Commissioners' Court
964 E. Harrison St.
Brownsville, TX 78520



GEORGE P. POWELL